Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition of Autotel Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Arizona Corporation Commission regarding Arbitration of an Interconnection Agreement with Citizens Utilities Rural Company, Inc.	)	WC Docket No. 06-194

CITIZENS UTILITIES RURAL COMPANY, INC.
OPPOSITION TO PREEMPTION PETITION OF AUTOTEL

I. INTRODUCTION

On October 16, 2006, Autotel filed with the Federal Communications Commission ("Commission") a petition for preemption of the jurisdiction of the Arizona Corporation Commission pursuant to section 252(e)(5) of the Communications Act of 1934, as amended, (the Act) and section 51.803 of the Commission's rules. In its petition, Autotel requests that the Commission preempt the Arizona Corporation Commission's ("Arizona Commission") two orders dismissing Autotel's request for arbitration of an interconnection agreement with Citizens Utilities Rural Company, Inc. ("Citizens") under section 252(b) of the Act and Autotel's request for termination of the rural exemption under section 251(f) of the Act.

The Commission recently (October 6, 2006) dismissed similar preemption petitions filed by Autotel against Qwest Corporation in WC Docket No. 06-134, DA 06-1997.[1] The reasoning

[1] *Memorandum and Order, In the Matter of Petition of Autotel Pursuant to Section 252(e)(5) of the Communications Act of 1934, as Amended, for Preemption of the Jurisdiction of the Arizona Corporation Commission Regarding Arbitration of an Interconnection Agreement with Qwest Corporation; Petition of Autotel Pursuant to Section 252(e)(5) of the Communications Act of 1934, as Amended, for Preemption of the Jurisdiction of the Colorado Public Utilities Commission Regarding Arbitration of an Interconnection Agreement with Qwest Corporation;*

in that Commission decision involving Qwest and Autotel applies here. In short, the Arizona Commission did address Autotel's requests and therefore did not "fail to act." Citizens respectfully requests the Commission to issue an order denying Autotel's preemption petition.[2]

II. FACTS

A. Initial Arbitration

On March 27, 2003, Autotel filed a Petition for Arbitration pursuant to 47 U.S.C. § 252 of the Act against Citizens with the Arizona Commission.[3] In that proceeding Autotel sought to enter into an interconnection agreement with Citizens. Citizens and Autotel conducted extensive negotiations and the arbitration hearing was held before the Arizona Commission on June 7, 2004.[4]

On October 5, 2004 the Commission issued its Opinion and Order (Arizona Commission October 2004 Order) addressing the interconnection agreement between Citizens and Autotel. The Order directed the parties to prepare and sign an interconnection agreement incorporating

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Petition of Autotel Pursuant to Section 252(e)(5) of the Communications Act of 1934, as Amended, for Preemption of the Jurisdiction of the New Mexico Public Regulation Commission Regarding Arbitration of an Interconnection Agreement with Qwest Corporation; Petition of Western Radio Pursuant to Section 252(e)(5) of the Communications Act of 1934, as Amended, for Preemption of the Jurisdiction of the Oregon Public Utility Commission Regarding Arbitration of an Interconnection Agreement with Qwest Corporation; Petition of Autotel Pursuant to Section 252(e)(5) of the Communications Act of 1934, as Amended, for Preemption of the Jurisdiction of the Utah Public Service Commission Regarding Arbitration of an Interconnection Agreement with Qwest Corporation; WC Docket No. 06-134 (October 6, 2006), (hereinafter "*Qwest Memorandum and Order*").

[2] Autotel attached to its Preemption Petition the March 23, 2006 Opinion and Order issued by the Arizona Commission in Docket No. T-01954B-05-0852 in response to Autotel's November 25, 2005 Notice of its Bona Fide Request for interconnection, services and network elements and termination of rural exemption (hereinafter "Arizona Commission March 2006 Order"). Autotel also attached to its Preemption Petition the July 28, 2006 Procedural Order issued by the Arizona Commission in Docket No. T-01954B-06-0232 in response to Autotel's April 7, 2006 Petition for Arbitration (hereinafter "Arizona Commission July 2006 Order"). Citizens is also attaching to this filing a copy of the Arizona Commission's October 5, 2004 Opinion and Order which followed the initial interconnection arbitration between Citizens and Autotel (hereinafter "Arizona Commission October 2004 Order").

[3] Arizona Commission October 2004 Order at 1.

[4] Arizona Commission October 2004 Order at 3.

the terms of the Commission's resolutions and that the signed interconnection agreement shall be submitted to the Commission for its review within thirty days of the date of this Decision.[5] Pursuant to the Arizona Commission's directive in Decision No. 67273, Citizens prepared the interconnection agreement incorporating the terms and conditions from the Arizona Commission's Order and forwarded the agreement to Autotel for signature. Autotel, however, refused to execute the agreement.[6]

On May 5, 2005, Autotel filed a lawsuit against the Arizona Commission and Citizens in the United States Federal District Court for Arizona challenging the Arizona Commission's October 2004 Order.[7] Both Citizens and the Arizona Commission have moved to dismiss Autotel's complaint in federal district court and have filed pleadings supporting the dismissal of the lawsuit on multiple grounds. The parties are currently awaiting a final order from the court regarding the dismissal motions.

B. Autotel's Second Request For Interconnection And Termination Of Rural Exemption

On November 21, 2005, Autotel filed with the Arizona Commission a Notice of its Bona Fide Request for interconnection, services and network elements with Citizens and requested an inquiry by the Arizona Commission into the termination of the exemption of Citizens pursuant to section 251(f)(l)(B) of the Telecommunications Act of 1996 (hereinafter "Second Interconnection Request").[8] Following the filing, the Arizona Commission established a docket to consider Autotel's Second Interconnection Request (Docket No. T-01954B-05-0852). On

[5] Arizona Commission October 2004 Order at 17.

[6] *See* Arizona Commission March 2006 Order at 2.

[7] *See* Arizona Commission March 2006 Order at 3.

[8] Arizona Commission March 2006 Order at 3.

December 12, 3005, Arizona Commission Administrative Law Judge convened a procedural conference to consider Autotel's Second Interconnection Request.[9] Autotel, Citizens and Staff of the Arizona Commission filed opening briefs on January 6, 2006.[10] Citizens and the Arizona Commission Staff requested the dismissal of Autotel's request for interconnection and termination of Citizens' rural exemption. On January 27, 2006, Autotel and Citizens filed reply briefs. [11] The Arizona Commission Administrative Law Judge scheduled an oral argument on the briefing and motion to dismiss for February 6, 2006. Mr. Oberdorfer of Autotel failed to appear. [12] The Arizona Commission Administrative Law Judge issued further procedural rulings. Following a review of the record, the Commission issued its Opinion and Order on March 23, 2006 dismissing with prejudice Autotel's Second Interconnection Request (Arizona Commission March 2006 Order).

C. Autotel's Third Request For Interconnection and Arbitration

On April 7, 2006 Autotel filed a Petition for Arbitration with the Arizona Commission asking the Commission to conduct an arbitration of an interconnection agreement with Citizens (hereinafter "Third Interconnection Request").[13] The Arizona Commission established a docket to consider Autotel's Third Interconnection Request (Docket No. T-01954B-06-0232). On May 2, 2006, Citizens filed a Response and Motion to Dismiss Autotel's Arbitration Request.[14] On May 16, 2006 Autotel filed its reply to Citizens Motion to Dismiss and Citizens filed a response

[9] Arizona Commission March 2006 Order at 3.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] Arizona Commission July 2006 Order at 1.

[14] *Id.*

on May 23, 2006.[15] On June 5, 2006, an Arizona Commission Administrative Law Judge convened a hearing to consider Autotel's Third Interconnection Request and Citizen's Motion to Dismiss.[16] On July 28, 2006, the Arizona Commission issued a Procedural Order dismissing Autotel's Arbitration Petition (Arizona Commission July 2006 Order).

III. ARGUMENT

A. The Commission Recently Dismissed Similar Preemption Requests By Autotel Involving Qwest

On October 6, 2006, the Commission issued a Memorandum Opinion and Order denying the petitions of Autotel and its affiliate Western Radio Services Co. (Autotel) for preemption of the jurisdiction of five state utility commissions, with respect to arbitration proceedings involving Autotel and Qwest Corporation.[17] Autotel sought preemption of the jurisdiction of the Arizona Corporation Commission, the Colorado Public Utilities Commission, the New Mexico Public Regulation Commission, the Oregon Public Utility Commission, and the Utah Public Service Commission. In its petitions, Autotel claimed that the state commissions generally failed to resolve issues between Autotel and Qwest. The Commission found that the state commissions' procedural dismissals of Autotel's petitions for arbitration of interconnection agreements with Qwest did not constitute failure to act under section 252 of the Act. The Commission concluded that a state commission may carry out its responsibilities under section 252 by either resolving the merits of the section 252 request or dismissing such a request on jurisdictional or procedural grounds.[18] The Commission explained:

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[15] *Id.*

[16] *Id.*

[17] *Qwest Memorandum and Order*.

[18] *Qwest Memorandum and Order at ¶ 8.*

The record demonstrates that in response to the arbitration petitions filed by Autotel, the state commissions docketed the petitions, followed procedural schedules and issued decisions on the petitions. When "the state agency actually 'makes a determination' under § 252 – there is no statutory basis for FCC preemption." Moreover, section 252(e)(5) "does not empower [the Commission] to look behind a state agency's dismissal of a carrier's claim to evaluate the substantive validity of that dismissal." Thus, the state commissions' dismissals of Autotel's arbitration petitions on procedural grounds, without addressing the merits of Autotel's arbitration issues, were final determinations by the state commissions and cannot be deemed a "failure to act" under section 252 of the Act.[19]

The issues raised by Autotel in this proceeding involving Citizens are substantially the same as the issues raised by Autotel in its preemption request proceeding involving Qwest. The Commission should adopt the same reasoning in this proceeding and deny Autotel's petition for preemption involving Citizens.

B. Autotel's Preemption Petition Is Formally Deficient

Autotel's petition falls short of the Commission's rule requiring that the party filing a petition pursuant to Section 252(b)(4)(C), state with specificity the basis for the petition. The Commission has previously stated its belief "that parties should be required to file a detailed written petition, backed by affidavit, that will, at the outset, give the Commission a better understanding of the issues involved and the action, or lack of action, taken by the state commission . . . A detailed written petition will facilitate a decision about whether the Commission should assume jurisdiction based on section 252(e)(5)." [20] Autotel's petition fails to give the Commission important facts.

Autotel does not disclose that it has refused to sign an interconnection agreement reflecting the terms of the Arizona Commission's October 2004 Order. Autotel does not

[19] *Qwest Memorandum and Order* at ¶ 8 (internal citations omitted).

[20] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, 16128-29 ¶ 1287 (1996) ("*Local Competition Order*") (subsequent history omitted).

mention its pending lawsuit in federal district court in Arizona. Autotel does not describe the numerous actions that the Arizona Commission undertook in response to Autotel's November 15, 2005 Second Interconnection Request including the establishment of a docket, scheduling of procedural conferences, establishing scheduling for briefing issues, conducting a hearing and issuing a written order addressing Autotel's Second Interconnection Request. Similarly, Autotel does not describe the actions undertaken by the Arizona Commission in responding to Autotel's April 7, 2006 Third Interconnection Request. Again, the Arizona Commission established a docket, scheduled procedural timelines for filing and oral argument, provided Autotel with an opportunity to address its arguments in briefing, conducted a hearing and issued an order addressing and dismissing the Third Interconnection Request. These missing facts are all material to this Commission's decision.

Just as Autotel's petition is formally deficient, it also reveals a profound misunderstanding of the procedures of interconnection negotiation. First, Autotel incorrectly assumes that the Arizona Commission's dismissal is tantamount to a failure to act. Second, Autotel seems to assume that it is not bound by the Autotel-Citizens arbitration already conducted by the Arizona Commission.

C. The Arizona Commission Did Not Fail To Act - Accordingly Preemption Is Not Appropriate

The first faulty assumption underlying Autotel's preemption petition is that the Arizona Commission's dismissal is tantamount to failure to act. Autotel as the party seeking preemption bears the burden of proving that the Arizona Commission has failed to act.[21] This is a heavy burden because this Commission has decided not to take an "expansive view" of what constitutes

[21] 47 C.F.R. § 51.803(b).

a state commission's failure to act for purposes of Section 252(e)(5).[22] Autotel lists actions that it believes the Arizona Commission should have taken such as requesting information from the parties and determining whether the contract language included in Autotel's Third Interconnection Request meets the requirements of Section 251.[23] Autotel points to nothing in the statute, this Commission's decisions or the court decisions interpreting the statute, that requires the state commission to go through these steps to support the dismissal of Autotel's Second Interconnection Request and Third Interconnection Request.

Section 252(e)(5) of the Act permits the Commission to preempt the jurisdiction of a state commission only where the state commission "fails to act." As noted above, the Commission has determined that if a state commission either 1) resolves the merits of a section 252 proceeding or 2) dismisses a section 252 proceeding on jurisdictional or procedural grounds, the state commission has carried out its responsibilities under Section 252.[24] Because the Arizona Commission acted upon Autotel's Second Interconnection Request and Third Interconnection Request and then dismissed the petitions, preemption is not appropriate in this situation.

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[22] *Local Competition Order*, 11 FCC Rcd at 16128 ¶ 1285.

[23] Preemption Petition at 2.

[24] Qwest Memorandum and Opinion at ¶ 17 (citing *Starpower Communications, LLC Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996*, CC Docket No. 00-52, Memorandum Opinion and Order, 15 FCC Rcd 11277, 11280-81, para. 8 (2000); *see also Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with Ameritech Illinois Before the Illinois Commerce Commission; Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with BellSouth Before the Georgia Public Service Commission; Petition for Commission Assumption of Jurisdiction of Low Tech Designs, Inc.'s Petition for Arbitration with GTE South Before the Public Service Commission of South Carolina*, CC Docket Nos. 97-163, 97-164, 97-165, Memorandum Opinion and Order, 13 FCC Rcd 1755, 1773-74, para. 33 (1997) (*Low Tech Designs Order*) ("[A] state commission does not 'fail to act' when it dismisses or denies an arbitration petition on the ground that it is procedurally defective . . . ."), *recon. denied*, 14 FCC Rcd 7024 (1999); *Global NAPs South, Inc. Petition for Preemption of Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Dispute with Bell Atlantic-Virginia, Inc.*, CC Docket No. 99-198, Memorandum Opinion and Order, 15 FCC Rcd 23318, 23326, 23327, paras. 16, 19 (CCB 1999)).

It is not appropriate to use Section 252(e)(5) as Autotel does here to ask this Commission to review the substantive validity of a state commission's dismissal of a party's claim. Autotel had the option to seek review of each dismissal in the appropriate judicial forum pursuant to Section 252(e)(6), which provides for judicial review if the state commission takes final action disposing of a claim. In situations such as this where the state commission made a determination under Section 252, the remedy for the party "aggrieved" by the state commission's determination is to seek review in the appropriate court under Section 252(e)(6).

Autotel relies on the Commission's decision *In re Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996* in support of its argument "that a state agency can fail to act under section 252(e)(5) even if it has issued an arbitration order, if that order is a general dismissal that does not resolve all issues 'clearly and specifically' presented to it."[25] The MCI order does not support Autotel's argument. In that order, the Commission determined that a state commission may not be found to have "failed to act" within the meaning of section 252(e)(5) in cases involving arbitration proceedings "if the issue or issues that are the subject of the preemption petition were never clearly and specifically presented to the state commission in accordance with any procedures set forth by the state commission."[26] Here, the Arizona Commission dismissed Autotel's Second Interconnection Request and Third Interconnection Request as improper attempts to initiate interconnection negotiations and invoke arbitration under section 252.

[25] *In re Petition of MCI for Preemption Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996,* CC Docket No. 97-166, Memorandum Opinion and Order, 12 FCC Rcd 15594 (1997).

[26] *Id.* at 15611.

Autotel also cites the D.C. Circuit's *Global Naps* decision,[27] which supports Citizens' view that preemption under section 252(e)(5) is not appropriate when a state commission dismisses a carrier's claim. In that case, Global Naps asked the Commission to preempt a state commission's authority over the interpretation of an interconnection agreement. The Commission refused to preempt the state commission, deciding that the state commission's dismissal of Global Naps' complaint was not a failure to act, and therefore the state commission was not subject to preemption.[28] The D.C. Circuit agreed with the Commission. The same result should hold here with respect to Autotel's petition for preemption.

In sum, because the Arizona Commission's dismissal was not tantamount to a failure to act, preemption is not appropriate. Rather, Autotel's remedy is judicial review under Section 252(e)(6).

D. Preemption Is Inappropriate Because Autotel Is Bound By The Arizona Commission's Prior Arbitration Decision

Implicit in Autotel's preemption petition is Autotel's incorrect assumption that the Arizona Commission's arbitration decision does not bind Autotel. For example, Autotel says that the Arizona Commission "incorrectly found that there is in effect an interconnection agreement between the parties that addresses the issues that were raised."[29] While Autotel never directly states that it is not bound by the Arizona Commission arbitration decision, Autotel's Second Interconnection Request and Third Interconnection Request make it clear that Autotel was effectively trying to circumvent the Arizona Commission's initial arbitration order by seeking to negotiate and arbitrate a new interconnection agreement with Citizens.

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[27] *Global Naps, Inc. v. FCC*, 291 F.3d 832, 837 (D.C. Cir. 2002).

[28] *Id.* at 839.

[29] Preemption Petition at 3. Autotel does not explain why it believes that the Arizona Commission's finding is incorrect.

The courts, however, have concluded that a competitive carrier like Autotel cannot disregard a state commission's decision in an interconnection arbitration proceeding by seeking to enter into a new interconnection agreement.[30] In another Global Naps case, Global Naps, the CLEC, was not satisfied with the arbitration order issued by the Massachusetts Department of Telecommunications and Energy ("Massachusetts Commission"). Consequently, Global Naps sought to opt into another interconnection agreement per Section 251(i) of the Telecommunications Act. The Massachusetts Commission rejected Global Nap's attempt to circumvent its prior arbitration decision for a more favorable interconnection agreement for the following reasons: 1) its decision in the underlying arbitration proceeding between the parties was final and binding on both parties and therefore Global Naps had an obligation to sign the arbitrated interconnection agreement and could not elect to enter into a new alternative interconnection agreement; 2) Global Nap should not be allowed to "game the system" by attempting to arbitrate an interconnection agreement and if unhappy with the results, merely seek a new agreement; and 3) public policy dictated that the interconnection agreement arbitrated by the parties be upheld to provide an incentive for competitive carriers to negotiate in good faith and to conserve administrative resources.[31] The Massachusetts Commission refused to allow Global Naps to enter into an interconnection agreement different than the interconnection agreement previously arbitrated by the Commission.

The United States District Court in Massachusetts and the United States Court of Appeals for the First Circuit upheld the Massachusetts Commission's decision to refuse to allow Global Naps to circumvent the prior Massachusetts Commission's arbitration order. The First Circuit

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[30] *See Global Naps v. Verizon New England*, 396 F.3d 16 (1st Cir. 2005), *affirming Global Naps v. Verizon New England*, 2004 WL 1059792 (D. Mass 2004).

[31] 396 F.3d at 21.

Court of Appeals also characterized Global Nap's refusal to comply with the Massachusetts Commission's arbitration order as a violation of the Telecommunication Act's duties of good faith and cooperation. The Court explained:

> *Section 252(b)(4) allows the state commission to impose conditions on both parties in order to carry out the arbitration. And 252(b)(5) creates a duty for both parties to cooperate with the arbitration at the risk of breaching the duty both parties have under 252(a), to negotiate in good faith. . . . In attempting to void the terms of a valid arbitration order, it is clear that Global Naps is refusing to cooperate with the DTE, in violation of its duty to negotiate in good faith."*[32]

Autotel previously initiated and participated in a lengthy interconnection agreement arbitration proceeding with Citizens before the Arizona Commission in Docket No. T-03234A-03-0188.[33] In that proceeding the Arizona Commission directed Autotel to execute the arbitrated interconnection agreement. Autotel has refused to comply with the Arizona Commission's order. Autotel then initiated its Second Interconnection Request in November 2005 and Third Interconnection Request in May 2006. Now Autotel is seeking use of this Commission's preemption power to avoid the terms of the Arizona Commission arbitration order. The Commission should not allow Autotel to disregard the Arizona Commission's arbitration order. The Commission should deny Autotel's preemption request.

IV. CONCLUSION

Autotel's preemption petition is deficient in that it fails to provide the Commission with key facts including the facts that the Arizona Commission had previously arbitrated an interconnection agreement between Autotel and Citizens, which Autotel declined to execute. Autotel also fails to identify the numerous actions, procedural and substantive opportunities the Arizona Commission undertook and provided Autotel regarding its Second Interconnection

[32] 396 F.3d at 25.

[33] *See* Arizona Commission October 2004 Order.

Request and Third Interconnection Request. These actions show that the Arizona Commission acted on each of Autotel's requests. Since the Arizona Commission reached a decision on Autotel's Second Interconnection Request and Third Interconnection Request, the Arizona Commission did not "fail to act" and is not subject to preemption. Accordingly, the Commission should deny Autotel's petition for preemption.

Dated November 20, 2006

Respectfully submitted,
CITIZENS UTILITIES RURAL COMPANY, INC.

By: Kevin Saville
2378 Wilshire Blvd.
Mound, Minnesota
(952) 491-5564 Telephone
(952) 491-5577 Facsimile
ksaville@czn.com

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission
DOCKETED

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IN THE MATTER OF THE PETITION OF AUTOTEL FOR ARBITRATION OF AN INTERCONNECTION AGREEMENT WITH CITIZENS COMMUNICATIONS OPERATING COMPANIES OF ARIZONA PURSUANT TO SECTION 252(b) OF THE TELECOMMUNICATIONS ACT OF 1996.	DOCKET NO. T-03234A-03-0188 DECISION NO. 67273 **OPINION AND ORDER**
DATE OF ARBITRATION:	June 7, 2004
PLACE OF ARBITRATION:	Tucson, Arizona
ADMINISTRATIVE LAW JUDGE:	Jane L. Rodda
APPEARANCES:	Richard L. Oberdorfer, president, Autotel; and Kevin Saville, Associate General Counsel, Citizens Communications Company.

BY THE COMMISSION:

On March 27, 2003, Autotel filed with the Arizona Corporation Commission ("Commission") a petition for Arbitration of Interconnection Rates, Terms and Conditions ("Petition") pursuant to 47 U.S.C. § 252(b) of the Telecommunications Act of 1996 (the "Act"). Autotel is a wireless carrier, or Commercial Mobile Radio Services ("CMRS") provider, and is not seeking interconnection as a CLEC. Citizens Communications Company operates three rural ILECs in Arizona—Citizens Utilities Rural Company, Citizens Telecommunications Company of the White Mountains and Navajo Communications Company, Inc. (collectively "Citizens").

On April 23, 2003, Citizens filed a Motion to Dismiss and Response of Citizens Utilities Rural Company, Inc. to Petition for Arbitration ("Motion to Dismiss"). Citizens argued Autotel's Petition contained several procedural and substantive deficiencies.

On June 27, 2003, Citizens filed a Motion to Compel and Memorandum of Points and Authorities in Support of Motion to Compel Disclosure and Impose Sanctions. In its Motion to Compel, Citizens requested the Commission order Autotel to provide Citizens with a specific and detailed technical explanation as to how Autotel, as a wireless carrier, intended to interconnect its wireless network using Citizens' wireline UNEs.

Following a Procedural Conference on July 10, 2003 to discuss Citizens' Motion to Compel, the Hearing Division issued its July 18, 2003 Procedural Order which ordered the parties to brief the issue of whether the Act requires Citizens to provide access to UNEs to wireless carriers such as Autotel. Citizens and Autotel filed initial briefs on August 1, 2003 and closing briefs on August 12, 2003. Because the issue was one of first impression in Arizona, the July 18, 2003 Procedural Order ordered Commission Utilities Division Staff ("Staff") to file a legal analysis. Staff filed its analysis on August 29, 2003.

On October 24, 2003, the Commission issued Decision No. 66457, finding that Citizens did not have a duty to provide access to unbundled Dedicated Transport or Loops to connect Autotel's MSC Switch and Cell Sites. The holding was based on the FCC's determination in its *Triennial Review Order* that transport from a wireless carrier's switch to its base stations, or from base station to base station, is not within the incumbent's network. The Commission ordered the parties to resume negotiations utilizing Citizens' basic CMRS interconnection agreement, or other Commission approved wireless interconnection agreement, as a template for negotiation. In addition, the Commission ordered that Citizens does not have a duty to provide access to other UNEs to Autotel unless and until (i) Autotel provides Citizens with a bona fide request, including details regarding the proposed interconnection and its use of UNEs in conjunction with its wireless network, and (ii) the parties negotiate an amendment to the wireless interconnection agreement or a new CLEC interconnection agreement to address the ordering, provisioning, billing (including rates) and repair of UNEs.

Following the October 24, 2003 Decision, the parties continued to negotiate, but could not reach agreement. On February 6, 2004, Autotel filed a Statement of Open Issues with the Commission. On February 10, 2004, Citizens filed its Matrix of Unresolved Issues.

By Procedural Order dated March 16, 2004, the Commission set the arbitration hearing timeframes. Mr. Richard Oberdorfer, Autotel's president, filed direct testimony April 23, 2004, and rebuttal testimony on May 14, 2004. (Autotel Ex A-1 and A-2, respectively) Citizens filed the direct testimony of Ms. Jenny Smith and Mr. Curt Huttsell on April 23, 2004 (Citizen's Ex C-1 and C-2, respectively), and the rebuttal testimony of Ms. Smith on May 14, 2004 (Citizens' Ex C-3).

The arbitration hearing convened on June 7, 2004, in Tucson, Arizona. Citizens and Autotel filed their Opening Briefs on July 26, 2004, and Reply Briefs on August 9, 2004.

ISSUES FOR ARBITRATION

Autotel's Petition contained four disputed issues: 1) appropriate rates for interconnection, services and network elements; 2) limitation of liability terms; 3) term of the agreement; and 4) dispute resolution.

Issue No. 1: How should rates for facilities, services and network elements be set?

Positions of the Parties:

Autotel:

Autotel argues that the Commission must set the rates in accordance with 47 CFR 51 Subpart F, which addresses discounted TELRIC (total element long run incremental cost) pricing. Autotel Opening Brief at 2. Autotel argues that Citizens' proposed use of access charges is expressly prohibited. See Autotel Reply Brief at 3. Autotel claims that the relevant rule is 47 CFR §51.515 which provides:

> (a) Neither the interstate access charges described in part 69 of this chapter nor comparable intrastate access charges shall be assessed by an incumbent LEC on purchaser of elements that offer telephone exchange or exchange access services.

Autotel also cites *AT&T v. Pacific Bell*, 203 F.3rd 1183 (9th Cir. 2000)(Section 252(d)(1)provides that rates for UNEs should be based on cost).

Autotel asserts that the Commission should set interim rates for UNEs until generic cost dockets for the three Citizens companies can be completed. Autotel states the interim rates should approximate or be identical to the Commission–approved TELRIC rates for other ILECs in Arizona.

Autotel states that its affiliate has reviewed cost studies of other rural ILECs that operate in similar geography as Citizens. Autotel believes these studies indicate that Citizens' TELRIC rates may be lower than Qwest's rates. Autotel proposes that to prevent economic hardship to either party, the Commission should impose a true-up provision in the agreement to conform the interim charges to the final Commission approved TELRIC rates.

Regarding reciprocal compensation, Autotel argues that it is the Commission, and not Citizens that must establish the reciprocal compensation rates. See Reply Brief at 3. Similarly, Autotel argues that pursuant to §252(c)(2) of the 1996 Act, the Commission must set any rates for interconnection, services, or network elements according to subsection (d). Id.

Autotel argues that in *US West v Jennings*, 46 F. Supp.2d 1004 (D. AZ 1992), the court held that a bona fide request ("BFR") process for UNE unbundling violates §251(c)(3) of the Act.

Citizens:

Citizens believes that the rates for "interconnection," "services" and "network elements" must be addressed separately given the nature of these three items and the fact that "interconnection," "services" and "network elements" are addressed in different FCC rules and requirements.

Citizens argues that it is inappropriate to adopt Autotel's suggestion that rates for interconnection be based on Qwest's costs of providing service. According to Citizens, the FCC rules clearly contemplate that the rates included in an interconnection agreement are based on the costs of the incumbent LEC (see 47 C.F.R. §51.505) and Qwest's costs for providing service have no direct applicability or bearing on Citizens' costs for providing service.

Citizens claims that the rates set forth in its proposed agreement for interconnection facilities and reciprocal compensation are consistent with state and federal rules. Citizens' proposed agreement provides that Autotel can connect its facilities at Citizens' end office or another mutually agreed upon Point of Interconnection ("POI") on Citizens' network. A.A.C. R14-2-1303 addresses the establishment of a POI between two carriers. The rule specifically provides:

> Each company interconnecting pursuant to the provisions of this Section shall be responsible for building and maintaining its own facilities to the point of interconnection. Companies are free to negotiate points of interconnection that involve the recurring and non-recurring compensation

by one carrier for the transport facilities of another carrier.

Citizens states that Section 4.2 of its agreement is consistent with this requirement providing that "Each Party is solely responsible for the provision of transport facilities necessary for the carriage of interchanged traffic between the Point of Interconnection and points within its own network and for all costs of delivering traffic to the Point of Interconnection." (Ex- C-1, Ex 1). Autotel can use its own facilities, the facilities of another provider, or Citizens' facilities to reach the POI. If Autotel elects to utilize the facilities of a third party, Autotel will be subject to the applicable retail rates established by that carrier. It Autotel elects to utilize Citizens' facilities, the facilities will be provided pursuant to the special access services provisions of Citizens FCC #1 Tariff. Id. In addition, consistent with FCC rules applicable to two-way trunking, Citizens' proposed agreement provides that Autotel would share the costs of two-way trunk facilities to exchange traffic with Citizens. Citizens provided evidence that these terms are consistent with interconnection agreements it has with other wireless carriers.

FCC Rule 47 CFR § 51.703, entitled "Reciprocal compensation obligation of LECs" provides:

> (a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.

The FCC rules require reciprocal compensation to be based on TELRIC. Citizens has completed a cost analysis for the forward-looking TELRIC of end office switching for each of its Arizona ILECs separately. The study indicates that the TELRICs of end office switching are 1.234¢ per minute of use for Citizens Utilities Rural Company, Inc; 1.1711¢ per minute use for Citizens Telecommunications Company of the White Mountains, Inc., and 1.9381¢ per minute for Navajo Communications Company, Inc. (C-2 at 12) Citizens explains these individual estimates do not include all of the forward-looking costs of other network elements beyond end office switching. Id. Citizens asserts these studies would support a rate higher than the 1.1¢ per minute use proposed by Citizens in its agreement with Autotel, however, beginning in 2003, Citizens started offering wireless carriers the same transport and termination rate nationwide (1.1¢ per minute). Citizens asserts that Autotel has not proposed an alternative reciprocal compensation rate for exchanging traffic, nor has it

offered any information that would support an alternative reciprocal compensation rate. (TR at 20).

Furthermore, Citizens argues the Commission need not address rates for UNEs at this time, because in Decision No. 66457 the Commission contemplated that Citizens and Autotel would enter into an amended interconnection agreement, or draft a new agreement for the use of UNEs, after Autotel submitted a BFR. Because Autotel has not submitted any detailed information concerning its use of UNEs, Citizens argues there is no basis to include UNEs or rates for UNEs in the current interconnection agreement. Citizens' proposed agreement contains a BFR provision that would enable Autotel to make a bona fide request for UNEs. Section 1.3 of Attachment 2 of Citizens' proposed interconnection agreement provides:

> 1.3 A BFR shall be submitted in writing and on the form attached as Exhibit A. The form will request, and Carrier will need to provide, at a minimum: (a) a technical description of each requested Network Element; (b) the desired interface specification; (c) each requested type of network Element; (d) a statement that the network Element will be used to provide a Telecommunications Service; (e) the quantity requested; (f) the specific location requested . . .

Citizens states that based on the BFR information, Citizens would determine the technical feasibility for providing the requested access to UNEs. Thus, Citizens argues, its BFR process would allow Autotel the opportunity to request a UNE at a later date and is consistent with the requirements of Decision No. 66457.

Citizens also asserts that as a rural telephone company, it is exempted under Section 251(f) of the Act from the interconnection and unbundling requirements imposed on local exchange carriers under Section 251. That section provides:

> (f) Exemptions for certain rural telephone companies
>
> (A) Exemption
> Subsection (c) of this section shall not apply to a rural telephone company until
>
> (i) such company has received a bona fide request for interconnection, services, or network elements, and
> (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title than subsections (b)(7) and (c)(1)(D) thereof.
>
> (B) State termination of examination and implementation schedule.

> The party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission, the State commission shall conduct an inquiry for the purpose of determining whether to terminate the exemption under subparagraph (a). Within 120 days after the State commission receives notice of the request, the State commission shall terminate the exemption if the request is not unduly economically burdensome, is technically feasible, and is consistent with section 254 of this title (other than subsections (b)(7) and (c)(1)(D) thereof). Upon termination of the exemption, a State commission shall establish an implementation schedule for compliance with the request that is consistent in time and manner with Commission regulations.

Citizens states that pursuant to Section 251(f), a state commission may terminate an exemption for a rural telephone company if a bona fide request from a competing carrier for UNEs "is technically feasible." However, in order for Citizens or the Commission to determine whether a bona fide request is "technically feasible" the request must contain a minimum level of detail regarding how the requesting carrier will interconnect and utilize the UNE.

Resolution:

In Decision No. 66457, we determined that in its *Triennial Review Order*[1], the FCC clarified that "the Act does not require incumbent LECs to unbundle transmission facilities connecting incumbent LEC networks to competitive LEC networks for the purpose of backhauling traffic." The FCC concluded that the definition of dedicated transport network element includes only those transmission facilities within an ILEC's network, i.e. between ILEC switches. Transmission facilities that "simply connect a competing carrier's network to the ILEC's network are not inherently a part of the incumbent LEC's local network and not subject to unbundling." *TRO* at para. 366. Thus, in Decision No. 66457 the Commission found:

> To date Autotel has not demonstrated that the access it seeks to dedicated transport would fall under the unbundling obligation as articulated by the FCC. Absent such showing, Citizens has no obligation to provide unbundled access. Neither has Autotel demonstrated how it would be able to use UNEs other than Transport and Loops to effect interconnection. Given the novelty of Autotel's request, Citizens' request that Autotel provide detailed information on how it would use these UNEs to interconnect is reasonable." *Dec. No. 66457 at FOF 17.*

[1] *In the Matter of Review of the §251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1991; Deployment of Wireless Services Offering Advanced Telecommunications Capability*, Report and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-338, 96-98, 98-147, Adopted February 20, 2003, Released August 21, 2003 ("TRO").

Consequently, the Commission ordered the parties:

> to resume negotiations employing Citizens' basic CMRS interconnection agreement or other Commission–approved wireless interconnection agreement as a template for negotiations.

and:

> Citizens does not have a duty to provide access to other UNEs to Autotel unless and until (i) Autotel provides Citizens with a bona fide request including details regarding the proposed interconnection and its use of UNEs in conjunction with its wireless network and (ii) the parties negotiate an amendment to the wireless interconnection agreement or a new CLEC interconnection agreement to address the ordering, provisioning, billing (including rates) and repair of UNEs.

Subsequent to our issuing Decision No. 66457, in *USTA v. FCC*, 359 F.3rd 554 (D.C. Cir. 2004) ("USTA II"), the D.C. Circuit Court vacated portions of the *TRO*. However, the *USTA II* decision did not affect that portion of the *TRO* that finds that facilities running between an ILEC's switch and a competitive provider's switch are excluded from dedicated transport. The *USTA II* court remanded to the FCC the issue of whether entrance facilities were outside the definition of "dedicated transport."

In addition, with respect to wireless carriers, the *USTA II* Court vacated the FCC's determination that the availability of tariffed special access circuits was irrelevant to the determination of whether wireless carriers would be "impaired" without access to unbundled dedicated transport (including ILEC interoffice transport). The *USTA II* Court held:

> The Commission offers several justifications for its decision to treat special access availability as irrelevant to the impairment analysis. None withstands scrutiny.
>
> . . .
>
> After all the purpose of the Act is not to provide the widest possible unbundling, or to guarantee competitors access to ILEC network elements at the lowest price that government may lawfully mandate. Rather, its purpose is to stimulate competition—preferably genuine, facilities-based competition. Where competitors have access to necessary inputs at rates that allow competition not only to survive but to flourish, it is hard to see any need for the Commission to impose the costs of mandatory unbundling. 359 F.3rd at 476.
>
> We vacate the Commission's decision not to take into account availability of tariffed special access services when conducting the impairment analysis, and we therefore vacate and remand the decision that wireless carriers are impaired without unbundled access to ILEC dedicated

transport. 359 F.3rd at 594.

Thus, we believe that the subsequent remand of the *TRO* by the D.C. Circuit Court does not undermine our findings in Decision No. 66457 regarding Autotel's access to UNEs.

Notwithstanding the directive of Decision No. 66457, Autotel continues to assert its right to access UNEs to interconnect its wireless network. The evidence, however, shows that typically, UNEs are not utilized to interconnect wireless and wireline networks. (Ex C-1 at 8) Autotel gives no evidence for us to conclude otherwise. Neither does Autotel provide convincing legal authority to contradict our finding in Decision No. 66457 that Citizens does not have a duty to provide access to UNEs unless and until Autotel provides detailed information on how it would utilize such UNEs for interconnection.

Autotel has not provided any detail on its use of UNEs. Unless and until Autotel can provide sufficiently detailed information on how it would utilize UNEs to interconnect its wireless network with Citizens to allow Citizens to determine if such interconnection is feasible, Autotel is not entitled to UNEs at TELRIC prices.

In the first phase of this arbitration which lead to Decision No. 66457, this Commission approved Citizens' CMRS template agreement, or other Commission-approved CMRS agreement as the starting place for negotiations. Thus, the form of Citizens' proposed interconnection agreement is consistent with our holding in Decision No. 66457. Autotel's proposed form of contract does not conform to the directive of Decision No. 66457, as it continues to specify that interconnection will be through UNEs, without providing details of how the UNEs will be utilized.

Autotel apparently believes that by asking the Commission to accept Citizens' proposed version of interconnection agreement that derives from its CMRS template, Citizens is asking the Commission to disregard the §252 requirement concerning the negotiation and arbitration process. See Autotel Reply Brief at 5. The record demonstrates that in response to Autotel's concerns, Citizens has agreed to modify its template agreement. Starting from a template agreement does not abrogate the negotiation and arbitration process. We find that using Citizens' template as a starting point for negotiations complies with the Act.

We find that Citizens' proposed BFR process to address a specific and detailed request for

UNEs is reasonable given the novelty of Autotel's proposal. Autotel cites the *US West* case for the proposition that a BFR process for the unbundling of UNEs violates §251(C)(3) of the Act. See Autotel Reply Brief at 9. In that case, however, the court questioned whether the BFR process was necessary to meet US West's concerns of technical feasibility. On remand, the court directed the Commission to consider "whether US West's legitimate concerns can be addressed by a less cumbersome procedure than is required by the present agreement." 46 F. Supp. 2d at 1016. In that case, CLECs challenging the BFR process had established a record to cause the court to question whether the BFR process was needed in all cases. Here, Autotel has not provided any evidence that its request for unbundled UNEs, which are not typically utilized in interconnecting wireless networks with wireline networks, can be accommodated in a less burdensome manner.

The reasonableness of Citizens' proposed BFR process is further supported by the requirements of Section 251(f) of the Act concerning rural carriers.

Citizens' proposed BFR process is contained in Sections 1.3 through 1.7 of its proposed agreement. Although we find that the BFR process is the appropriate method to address a future request for UNEs, as currently written, the agreement does not specify a time frame for Citizens to respond to a bona fide request. We find that Section 1.4 should be amended to require Citizens to acknowledge receipt of a BFR, and inform Autotel of any missing information within five (5) business days of receipt of the BFR. Further, Section 1.5 should be amended to require Citizens to provide Autotel with an analysis of the BFR within 15 business days after Citizens has found the BFR to be complete. If it is ultimately determined that Autotel is entitled to UNEs for interconnection, the rates will be set at that time.

Finally, the evidence shows that Citizens' proposed reciprocal compensation rate of $0.011 per minute complies with TELRIC. Consequently, we find that the reciprocal compensation rates set forth in Citizens' proposed interconnection agreement comply with federal and state rules, are fair and reasonable and should be adopted.

. . .

. . .

. . .

Issue No. 2: Should a Party's liability be limited in the case of repeated breach of the agreement?

Positions of the Parties:

Autotel:

Autotel proposes that the interconnection agreement include the following provision:

> 7.1 Neither Party shall be liable to the other for any indirect, incidental, special or consequential damages arising out of or related to this agreement or the provision of service hereunder. Notwithstanding the foregoing limitation, a Party's liability shall not be limited by the provisions of this section 7 in the event of it's (sic) willful or intentional misconduct, including gross negligence, or it's (sic) repeated breach of any one or more of it's (sic) material obligations under this agreement. A Party's lost revenue caused by the other Party's breach of this agreement shall be deemed direct damages. A Party's liability shall not be limited with respect to it's (sic) indemnification obligations.

Autotel argues there is no law or regulation limiting Citizens' liability in interconnection agreements. It asserts that §252 of the Act does not give the Commission the authority to limit the relief available to a party to the interconnection agreement in another forum.

Citizens:

Citizens asserts that Autotel has failed to explain or identify how "lost revenue" under its proposed language would be calculated. Citizens notes that Autotel is not providing services in any of Citizens' exchanges in Arizona, and has not taken any actions to establish its cellular equipment or facilities in the state. Thus, Citizens believes it is unclear that Autotel will have any customers or revenue in Citizens' service territory. Furthermore, even if Autotel had customers, Citizens argues it is unclear how "lost revenue" would be measured. Citizens believes it may be more appropriate for the parties to receive a credit against their charges for service interruption or outage. Section 6 of Citizens' proposed agreement provides for a pro rata credit for disrupted service. In addition, sections 11 through 11.6 of the Citizens agreement contain liability protection and indemnity protection.

Furthermore, Citizens' proposed agreement addresses the issue of liability for special damages as follows:

> 13.4 Except for allowance of interruptions as set forth in Section 6, in no event will either Party be liable to the other Party for incidental, special or

> consequential damages, loss of goodwill, anticipated profit, or other claims for indirect or special damages in any manner related to this Agreement or the services even if such Party was advised of the possibility of such damages, and whether or not such damages were foreseeable or not at the time this Agreement was executed.

Under this provision neither party would be obligated to the other for lost revenues or special damages, which Citizens claims may be difficult to measure and speculative. Citizens Reply Brief at 6.

Citizens is skeptical of Autotel's claim at the hearing that Autotel's proposed language would obviate the need for lengthy proceedings before the Commission. Citizens believes it more likely that the parties will not be able to agree on whether a repeated breach has occurred, and a Commission proceeding would be required in any event.

Finally, Citizens argues there is no basis for Autotel's suggestion that without liability for Autotel's lost revenues, Citizens will not have incentive to comply with the terms and conditions of an agreement with Autotel.

Resolution:

We believe that Autotel has a valid concern that legitimate claims for repeated or intentional breaches should not be foreclosed. Citizens' arguments that damages are difficult to measure does not convince us that a party should not be allowed to make its case under certain circumstances. Further, just because Autotel has no current revenues in the state does not mean that it never will have revenues. We believe that the Agreement should explicitly recognize that a party's liability is not limited in cases of repeated, intentional, or grossly negligent breaches. Consequently, the following language should replace the current proposed section 13.4 (either by replacing 13.4, or creating a new section on liability):

> Limitation of Liability
>
> 1. Each Party shall be liable to the other for direct damages for any loss, defect or equipment failure resulting from the causing Party's conduct or the conduct of its agent or contractors in performing the obligations in this Agreement.
>
> 2. Neither Party shall be liable to the other under this Agreement for indirect, incidental, consequential, or special damages, including (without limitation) damages for lost profits, lost revenues, lost savings suffered by the other Party regardless of the form of action,

whether in contract, warranty, strict liability, tort, including (without limitation) negligence and regardless of whether the Parties know the possibility that such damages could result.

3. Nothing in this Section shall limit either Party's liability to the other for willful or intentional misconduct, including its gross negligence, or its repeated breach of any one or more of its material obligations under this Agreement.

4. Nothing contained in this Section shall limit either Party's obligations of indemnification as specified in the Indemnity Section of this Agreement.

Issue No. 3: What is an appropriate term for the interconnection agreement?

The parties have reached a consensual resolution of this issue. Autotel initially proposed a five year term. Citizens had proposed a one year term. Autotel was concerned about possible service interruptions while a new interconnection agreement is negotiated. Autotel believed that a "Change of Law" provision would address Citizen's concerns about entering into a five year agreement. Citizens argued that with the rapid technological and regulatory changes in the telecommunications industry, it was hard to predict what issues and requirements may exist in five years.

To address Autotel's concerns, Citizens proposed that the initial term of the agreement be two years, with successive automatic renewals. Citizens proposed, and Autotel accepted (see Autotel Opening Brief at 3) the following language:

9.1 This Agreement will become effective upon the first business day following the date this Agreement has been approved by the applicable regulatory authority of authorities and will continue for a period of two (2) years unless terminated earlier under the conditions set forth in this Section. This Agreement will be automatically renewed for successive period of one (1) year after the initial term unless either Party provides the other Party with no less than ninety (90) day's (sic) prior, written notification of, in the case of Citizens, its intent to terminate this Agreement, or in the case of either Party, its desire to renegotiate at the end of the initial or any successive period. **During any such renegotiations, the rates, terms and conditions of this Agreement will remain in effect until the effective date of the renegotiated agreement.**

The proposed resolution is fair and reasonable and should be adopted. The highlighted language makes clear that the agreement remains in effect while the parties negotiate a new agreement.

. . .

Issue No. 4: Should mandatory mediation be required before any other form of relief can be sought?

The parties have consensually resolved the fourth issue, agreeing to the following language:

> The Parties agree that in the event of a default or any other dispute arising hereunder or in connection herewith, the aggrieved Party shall first discuss the default or dispute with the other Party and seek resolution prior to taking any action before any court or regulator or before authorizing any public statement about or disclosure of the nature of the dispute to any third party. In the event that the Parties shall be unable to resolve a default or other dispute, recourse may be had by either Party to the ACC, if it has jurisdiction over the breach or dispute or to an appropriate court having jurisdiction over the Parties. Each Party shall bear the cost of preparing and presenting its case through all phases of the dispute resolution procedure herein described.

The language agreed to by the Parties does not restrict either Party's right to seek Commission resolution of disputes over which the Commission has jurisdiction. It is a fair and reasonable resolution of this issue and should be approved.

* * * * * * * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On March 27, 2003, Autotel filed with Commission its Petition pursuant to 47 U.S.C. § 252(b) of the Act.

2. Autotel is a wireless carrier, or Commercial Mobile Radio Services provider, and is not seeking interconnection as a CLEC.

3. Citizens Communications Company operates three rural ILECs in Arizona—Citizens Utilities Rural Company, Citizens Telecommunications Company of the White Mountains and Navajo Communications Company, Inc..

4. On April 23, 2003, Citizens filed a Motion to Dismiss and Response of Citizens Utilities Rural Company, Inc. to Petition for Arbitration.

5. On June 27, 2003, Citizens filed a Motion to Compel and Memorandum of Points and Authorities in Support of Motion to Compel Disclosure and Impose Sanctions. In its Motion to Compel, Citizens requested the Commission order Autotel to provide Citizens with a specific and detailed technical explanation as to how Autotel, as a wireless carrier, intended to interconnect its wireless network using Citizens' wireline UNEs.

6. Pursuant to a July 18, 2003 Procedural Order, the parties briefed the issue of whether the Act requires Citizens to provide access to UNEs to wireless carriers such as Autotel. Citizens and Autotel filed initial briefs on August 1, 2003 and closing briefs on August 12, 2003. Because the issue was one of first impression in Arizona, the July 18, 2003 Procedural Order ordered Staff to file a legal analysis, which Staff filed on August 29, 2003.

7. On October 24, 2003, to resolve issues raised in the Motion the Compel and settle a fundamental dispute, the Commission issued Decision No. 66457, finding that Citizens did not have a duty to provide access to unbundled Dedicated Transport or Loops to connect Autotel's MSC Switch and Cell Sites because the requested transport for a wireless carrier's switch to its base stations, or from base station to base station, is not within the incumbent's network. The Commission ordered that the parties should resume negotiations utilizing Citizens' basic CMRS interconnection agreement, or other Commission approved wireless interconnection agreement, as a template for negotiation. In addition, the Commission ordered that Citizens does not have a duty to provide access to other UNEs to Autotel unless and until (i) Autotel provides Citizens with a bona fide request, including details regarding the proposed interconnection and its use of UNEs in conjunction with its wireless network, and (ii) the parties negotiate an amendment to the wireless interconnection agreement or a new CLEC interconnection agreement to address the ordering, provisioning, billing (including rates) and repair of UNEs.

8. Following the issuance of Decision No. 66457, the parties continued to negotiate, but could not reach an agreement. On February 6, 2004, Autotel filed a Statement of Open Issues with the Commission. On February 10, 2004, Citizens filed its Matrix of Unresolved Issues.

9. By Procedural Order dated March 16, 2004, the Commission set the arbitration hearing timeframes.

10. Mr. Richard Oberdorfer, Autotel's president, filed direct testimony on April 23, 2004, rebuttal testimony on May 14, 2004.

11. Citizens filed the direct testimony of Ms. Jenny Smith and Mr. Curt Huttsell on April 23, 2004, and the rebuttal testimony of Ms. Smith on May 14, 2004 (Citizens' Ex C-3).

12. The arbitration hearing convened on June 7, 2004, in Tucson, Arizona.

13. Citizens and Autotel filed their Opening Briefs on July 26, 2004, and Reply Briefs on August 9, 2004.

14. The parties submitted four issues to be arbitrated, however, they were able to reach consensus on two of the issues.

15. The Commission has analyzed the issues presented by the Parties and has resolved the issues as stated in the Discussion above.

16. The Commission hereby adopts the Discussion and incorporates the Parties' positions and the Commission's resolution of the issues herein.

17. Pursuant to A.A.C. R14-2-1506(A), the Parties will be ordered to prepare and sign an interconnection agreement incorporating the issues as resolved by the Commission, for review by the Commission pursuant to the Act, within thirty days from the date of this Decision.

CONCLUSIONS OF LAW

1. Citizens and Autotel are public service corporations within the meaning of Article XV of the Arizona Constitution.

2. Citizens and Autotel are telecommunications carriers within the meaning of 47 U.S.C. § 252.

3. The Commission has jurisdiction over Autotel and Citizens and of the subject matter of the Petition.

4. The Commission's resolution of the issues pending herein is just and reasonable, meets the requirements of the Act and regulations prescribed by the FCC pursuant to the Act, is consistent with the best interests of the parties, and is in the public interest.

ORDER

IT IS THEREFORE ORDERED that the Commission hereby adopts and incorporates as its Order the resolution of the issues contained in the above Discussion.

IT IS FURTHER ORDERED that Autotel and Citizens Utilities Rural Company, Citizens Telecommunications Company of the White Mountains and Navajo Communications Company, Inc. shall prepare and sign an interconnection agreement incorporating the terms of the Commission's resolutions.

IT IS FURTHER ORDERED that the signed interconnection agreement shall be submitted to the Commission for its review within thirty days of the date of this Decision.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN | COMMISSIONER | COMMISSIONER

COMMISSIONER | COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 5th day of October, 2004.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

JR:mlj

SERVICE LIST FOR: T-03234A-03-0188

DOCKET NO.: AUTOTEL
CITIZENS COMMUNICATIONS COMPANY

Richard L. Oberdorfer
AutoTel
114 N.E. Penn Avenue
Bend, Oregon 97701

Kevin Saville
Associate General Counsel,
Citizens Communications Company
2378 Wilshire Blvd.
Mound, MN 55364

Robert Metli
Cheifetz Iannitelli Marcolini, P.C.
1850 North Central Avenue,
19th Floor
Phoenix, Arizona 85004

Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Ernest Johnson, Director
Utilities Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007